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Attorneys for Proposed Defendant-Intervenor
CONTRA COSTA WATER DISTRICT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS;
INSTITUTE FOR FISHERIES RESOURCES;
GOLDEN STATE SALMON ASSOCIATION;
NATURAL RESOURCES DEFENSE
COUNCIL, INC.; DEFENDERS OF
WILDLIFE; and BAY.ORG d/b/a THE BAY
INSTITUTE,

Plaintiffs,

vs.

WILBUR ROSS, in his official capacity as
Secretary of Commerce; CHRIS OLIVER, in
his official capacity as Assistant Administrator
for Fisheries at the National Oceanic and
Atmospheric Administration; NATIONAL
MARINE FISHERIES SERVICE; DAVID
BERNHARDT, in his official capacity as
Secretary of the Interior; AURELIA
SKIPWITH, in her official capacity as Director,
U.S. Fish and Wildlife Service; U.S. FISH
AND WILDLIFE SERVICE; BRENDA
BURMAN, in her official capacity as
Commissioner of Reclamation; and U.S.
BUREAU OF RECLAMATION,

Defendants.

Case No. 1:20-CV-00431-DAD-EPG

Related to Case No. 1:20-CV-00426-DAD-EPG

**STIPULATION AND ORDER
REGARDING INTERVENTION OF
CONTRA COSTA WATER DISTRICT**

1 This stipulation is entered into by proposed Defendant-Intervenor Contra Costa Water
 2 District (“CCWD”); Plaintiffs Pacific Coast Federation of Fishermen’s Associations, Institute for
 3 Fisheries Resources, Golden State Salmon Association, Natural Resources Defense Council,
 4 Defenders of Wildlife, and Bay.Org d/b/a The Bay Institute (“Plaintiffs”); Defendants Wilbur
 5 Ross, in his official capacity as Secretary of Commerce; Chris Oliver, in his official capacity as
 6 Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration;
 7 National Marine Fisheries Service; David Bernhardt, in his official capacity as Secretary of
 8 Interior; Aurelia Skipwith, in her official capacity as Director of the U.S. Fish and Wildlife
 9 Service; U.S. Fish and Wildlife Service; Brenda Burman, in her official capacity as
 10 Commissioner of Reclamation; and U.S. Bureau of Reclamation (“Federal Defendants”); and
 11 Defendants-Intervenors San Luis & Delta-Mendota Water Authority (“SLDMWA”), Westlands
 12 Water District (“Westlands”), State Water Contractors (“SWC”), Tehama-Colusa Canal Authority
 13 (“TCCA”), and Sacramento River Settlement Contractors (“SRS Contractors”).

14 1. WHEREAS, the Plaintiffs in the instant action allege that the Biological Opinions
 15 issued on October 21, 2019 (“2019 Biological Opinions”), by the U.S. Fish and Wildlife Service
 16 (“USFWS”) and the National Marine Fisheries Service (“NMFS”) for the coordinated long-term
 17 operations of the Central Valley Project (“CVP”) and State Water Project (“SWP”) do not comply
 18 with the requirements of the federal Endangered Species Act, and that the associated Final
 19 Environmental Impact Statement (“Final EIS”) prepared and adopted by the U.S. Bureau of
 20 Reclamation (“Reclamation”) does not comply with the requirements of the National
 21 Environmental Policy Act.

22 2. WHEREAS, prior to the issuance of the 2019 Biological Opinions, the long-term
 23 coordinated operations of the CVP and SWP were governed by a 2008 Biological Opinion issued
 24 by the USFWS and a 2009 Biological Opinion issued by NMFS (“2008 and 2009 Biological
 25 Opinions”).

26 3. WHEREAS, Plaintiffs filed the instant action in the U.S. District Court for the
 27 Northern District of California (“Northern District”), naming only Federal Defendants as
 28 defendants. ECF No. 1.

1 4. WHEREAS, the Northern District granted SLDMWA and Westlands' motion for
2 permissive intervention. ECF No. 37.

3 5. WHEREAS, the Northern District granted the SRS Contractors and TCCA
4 permissive intervention, subject to specified conditions, pursuant to a stipulation by the parties.
5 ECF No. 102.

6 6. WHEREAS, the Northern District transferred the action to this Court. ECF No.
7 112.

8 7. WHEREAS, this Court granted SWC's motion for permissive intervention, subject
9 to specified conditions. ECF No. 122.

10 8. WHEREAS, the Court granted the City of Redding and Knights Landing
11 Investors, LLC permissive intervention, as additional SRS Contractors, subject to specified
12 conditions, pursuant to a stipulation by the parties. ECF No. 124.

13 9. WHEREAS, CCWD relies on the Sacramento-San Joaquin Delta ("Delta") for its
14 water supplies to fulfill its mission of providing high-quality drinking water to its 500,000
15 customers in central and eastern Contra Costa County.

16 10. WHEREAS, CCWD seeks to intervene as a Defendant in this action, but only for
17 the limited purpose and on a limited basis as described below in this Stipulation.

18 11. WHEREAS, CCWD's operations are governed by a separate set of biological
19 opinions and permits that impose certain restrictions, for the protection of federally- and state-
20 listed species, on when CCWD may divert water from its intakes in the Delta and when CCWD
21 may fill its Los Vaqueros Reservoir.

22 12. WHEREAS, CCWD uses its Los Vaqueros Reservoir for storage, in order to shift
23 the timing of its diversions from the Delta, which enables CCWD to meet the requirements
24 specified in its biological opinions and permits while also ameliorating seasonal changes in Delta
25 water quality so that it can continually provide high-quality drinking water to its customers.

26 13. WHEREAS, there are times each year when CCWD coordinates its operations
27 with the operations of the CVP and SWP, in order to ensure that CCWD is not restricted in its
28

1 diversions and filling operations, beyond the restrictions that already are specified in CCWD's
2 own biological opinions and permits.

3 14. WHEREAS, Reclamation has made a commitment in its Final EIS and its Record
4 of Decision ("ROD") in this matter that it will continue to work with CCWD to ensure that the
5 implementation of the plan of the operations for the CVP and SWP does not create new or
6 additional restrictions on CCWD operations, beyond the restrictions that already are specified in
7 CCWD's own biological opinions and permits, thereby ensuring that CCWD will have
8 opportunities to fill Los Vaqueros Reservoir that are at least comparable to conditions in effect
9 prior to the ROD.

10 15. WHEREAS, a remedy ordered by the Court or a settlement reached by the parties
11 in this action could result in a change in how the CVP and SWP are operated.

12 16. WHEREAS, CCWD believes that such a change in how the CVP and SWP are
13 operated could result in reduced availability of high-quality water at CCWD's intakes in the
14 Delta, as well as the creation or imposition of new or additional restrictions on CCWD operations,
15 beyond the restrictions that already are specified in CCWD's own biological opinions and
16 permits.

17 17. WHEREAS, CCWD believes that these effects from a change in how the CVP and
18 SWP are operated could reduce CCWD's opportunities to fill its Los Vaqueros Reservoir with
19 high-quality water, as compared to the conditions in effect prior to Reclamation's ROD.

20 18. WHEREAS, CCWD seeks to protect its rights and interests and therefore seeks to
21 intervene in this action.

22 19. WHEREAS, CCWD does not seek to intervene in this action with respect to any
23 issues related to the merits of whether the 2019 Biological Opinions or the Final EIS are in
24 compliance with the requirements of federal law.

25 20. WHEREAS, CCWD instead seeks to intervene in this action only to address those
26 aspects of a Court-ordered remedy or a settlement by the parties that could result in the creation
27 or imposition of new or additional restrictions on CCWD operations and its ability to fill its Los
28

1 Vaqueros Reservoir, beyond the restrictions that already are specified in CCWD's own biological
2 opinions and permits.

3 21. WHEREAS, CCWD accordingly proposes to intervene only for the following
4 purposes: (1) to submit briefing, evidence and argument on those specific aspects of a potential
5 Court-ordered remedy, at such time when issues pertaining to remedy are presented to the Court,
6 that could result in the creation or imposition of new or additional restrictions on CCWD's
7 pumping or storage operations, where (A) such new or additional restrictions would be more
8 restrictive than the restrictions that already are specified in CCWD's own biological opinions and
9 incidental take permits; or (B) such new or additional restrictions would be more restrictive than
10 the pre-ROD effects on CCWD's pumping or storage operations resulting from the OMR limits
11 included in the 2008 and 2009 Biological Opinions; and (2) to participate in settlement
12 discussions among the parties that could result in the creation or imposition of such new or
13 additional restrictions on CCWD's pumping or storage operations as described above.

14 Notwithstanding the foregoing, CCWD also agrees that it will not submit briefing, evidence or
15 argument on: (1) whether the 2019 Biological Opinions or Final EIS comply with federal law;
16 (2) aspects of any proposed Court-ordered remedy that address operations upstream of the Delta;
17 and (3) aspects of any Court-ordered remedy that address Delta outflow requirements, except to
18 the extent such aspects of any Court-ordered remedy that address Delta outflow requirements
19 affect CCWD's pumping or storage operations.

20 22. WHEREAS, CCWD does not presently know when such Court proceedings or
21 settlement discussions referenced above in Paragraph 20 may occur, and therefore seeks to
22 intervene now in order to adequately preserve and protect its interests.

23 NOW, THEREFORE, it is hereby stipulated by and between Plaintiffs, CCWD, Federal
24 Defendants, and Defendant-Intervenors, through their respective counsel, as follows.

25 A. CCWD shall be granted permissive intervention in this action pursuant to Rule
26 24(b) of the Federal Rules of Civil Procedure.

27 B. CCWD's intervention in the action shall be limited to the specific matters
28 referenced above in Paragraph 20.

1 C. CCWD's participation shall further be subject to any limitations that the Court
2 may impose on that intervention, now or in the future, to ensure the fair and efficient resolution of
3 this litigation.

4 D. CCWD agrees to make a good-faith effort to avoid duplication of any arguments
5 raised by any other party in this action.

6 E. CCWD and Plaintiffs agree to meet and confer on the need for any proposed page
7 limitations in any subsequent briefing in this case to which CCWD is a participant. CCWD and
8 Plaintiffs reserve the right to seek or oppose additional limitations on the length of briefs in the
9 event that CCWD and Plaintiffs are unable to reach an agreement on page limits.
10

11 DATED: Apr. 27, 2020

PERKINS COIE LLP

13 By: /s/ Marc Bruner

14 MARC BRUNER

15 Attorneys for Proposed Defendant-Intervenor
CONTRA COSTA WATER DISTRICT

16 DATED: Apr. 27, 2020

ALTSHULER BERZON LLP

18 By: /s/ Barbara Chisholm (authorized 4/27/20)

19 BARBARA J. CHISHOLM

20 Attorneys for Plaintiffs GOLDEN STATE
SALMON ASSOCIATION; NATURAL
21 RESOURCES DEFENSE COUNCIL, INC.;
DEFENDERS OF WILDLIFE, AND
22 BAY.ORG d/b/a THE BAY INSTITUTE

23 DATED: Apr. 27, 2020

GLEN H. SPAIN

24 By: /s/ Glen H. Spain (authorized 4/27/20)

25 GLEN H. SPAIN

26 Attorney for Plaintiffs PACIFIC COAST
FEDERATION OF FISHERMEN'S
27 ASSOCIATIONS and INSTITUTE FOR
FISHERIES RESOURCES
28

1 DATED: Apr. 28, 2020

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
DIVISION WILDLIFE & MARINE RESOURCES
SECTION

4 By: /s/ Lesley Lawrence-Hammer (authorized 4/28/20)
LESLEY LAWRENCE-HAMMER
Attorneys for FEDERAL DEFENDANTS

6 DATED: Apr. 29, 2020

DOWNEY BRAND LLP

8 By: /s/ Meredith E. Nikkel (authorized 4/29/20)
MEREDITH E. NIKKEL
Attorneys for Defendants-Intervenors
RECLAMATION DISTRICT NO. 108,
SUTTER MUTUAL WATER COMPANY;
10 NATOMAS CENTRAL MUTUAL WATER
COMPANY; RIVER GARDEN FARMS
11 WATER COMPANY; PLEASANT GROVE-
VERONA MUTUAL WATER COMPANY;
12 PELGER MUTUAL WATER COMPANY;
MERIDIAN FARMS WATER COMPANY;
13 HENRY D. RICHTER, et al.; HOWALD
FARMS, INC.; OJI BROTHERS FARM, INC.;
14 OJI FAMILY PARTNERSHIP; CARTER
MUTUAL WATER COMPANY;
15 WINDSWEPT LAND AND LIVESTOCK
COMPANY; MAXWELL IRRIGATION
16 DISTRICT; BEVERLY F. ANDREOTTI, et al.;
TISDALE IRRIGATION AND DRAINAGE
17 COMPANY; PROVIDENT IRRIGATION
DISTRICT; PRINCETON-CODORA-GLENN
18 IRRIGATION DISTRICT and TEHAMA-
COLUSA CANAL AUTHORITY

20 DATED: Apr. 29, 2020

SOMACH SIMMONS & DUNN

22 By: /s/ Andrew Hitchings (authorized 4/29/20)
ANDREW HITCHINGS
Attorneys for Defendants-Intervenors GLENN-
COLUSA IRRIGATION DISTRICT;
23 RECLAMATION DISTRICT NO. 1004;
CONAWAY PRESERVATION GROUP, LLC;
24 DAVID AND ALICE teVELDE FAMILY
TRUST; PELGER ROAD 1700, LLC;
25 ANDERSON-COTTONWOOD IRRIGATION
DISTRICT; CITY OF REDDING; and KNIGHTS
26 LANDING INVESTORS, LLC

1 DATED: May 4, 2020

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD

3 By: /s/ Daniel J. O'Hanlon (authorized 5/4/20)
DANIEL J. O'HANLON

4 Attorneys for Defendants-Intervenors
5 SAN LUIS & DELTA-MENDOTA WATER
6 AUTHORITY and WESTLANDS WATER
DISTRICT

7 DATED: Apr. 30, 2020

VAN NESS FELDMAN LLP

8
9 By: /s/ Jenna R. Manedell-Rice (authorized 4/30/20)
JENNA R. MANDELL-RICE

10 Attorneys for Defendant-Intervenor
11 THE STATE WATER CONTRACTORS
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ORDER

The Court hereby grants permissive intervention to Contra Costa Water District pursuant to the terms of the parties' Stipulation.

IT IS SO ORDERED.

Dated: May 10, 2020


UNITED STATES DISTRICT JUDGE